NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2283-05T5

VIVIAN BROWN,

Plaintiff-Appellant,

v.

CSC INSURANCE SERVICES, THE NJAFIUA
and MTF AT RIVERSIDE,

Defendants-Respondents.

Submitted December 18, 2006 - Decided January 22, 2007

Before Judges Lintner and S.L. Reisner.

On appeal from the Superior Court of
New Jersey, Law Division, Essex County,
L-9790-04.

Eldridge Hawkins, attorney for appellant.

Maloof, Lebowitz, Connahan & Oleske,
attorneys for respondent New Jersey
Property-Liability Insurance Guaranty
Association, as statutory administrator of
the New Jersey Automobile Full Insurance
Underwriting Association and Market
Transaction Facility at Riverside (Matthew
J. Connahan, on the brief).

PER CURIAM

Plaintiff, Vivian Brown, appeals from an order entered on November 4, 2005, granting summary judgment in favor of

defendants, CSC Insurance Services, the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA), and Market Transaction Facility at Riverside (MTF),[1] dismissing plaintiff's complaint. We affirm substantially for the reasons expressed by Judge Lombardi rendered from the bench following oral argument on November 4, 2005.

We combine the relevant procedural history and facts. On November 14, 1998, plaintiff filed a complaint in the Law Division against defendants, seeking compensatory and punitive damages. Plaintiff asserts that she was injured in a September 1990 automobile accident and submitted medical bills to defendants who "refused [her] demands for payment and those of [most] Afro-American providers." In her 1998 Law Division complaint, plaintiff alleged violations of the New Jersey Constitution, New Jersey insurance law, and New Jersey commercial and consumer laws, asserting "[d]efendant companies paid . . . claims submitted by providers of Caucasian or white race as late as 1997, but have paid to date only one provider of the Afro-American or black race." On February 22, 2000, summary

[1] The NJAFIUA and MTF have been liquidated and are no longer in existence. Pursuant to N.J.S.A. 17:30A-2.1, existing claims have been assumed by the New Jersey Property-Liability Insurance Guaranty Association.

judgment was entered dismissing plaintiff's 1998 Law Division action. Plaintiff did not appeal.

On January 14, 2002, plaintiff filed a demand for no-fault benefits with the American Arbitration Association (AAA) pursuant to N.J.S.A. 39:6A-5, seeking PIP benefits, specifically medical expense benefits, income continuation benefits, essential service benefits, attorney's fees and costs, interest, and punitive damages for bad faith. On July 9, 2003, the arbitrator dismissed plaintiff's claim with prejudice, finding that she failed to meet her burden to establish that a timely claim existed, the amount of the claim, and the necessary documentary evidence to establish a causal relationship to the 1990 automobile accident. In her ruling, the arbitrator noted that initially plaintiff filed voluminous submissions, which were not tabulated. The arbitrator went on to indicate that later, despite counsel's agreement to submit an outline of the "claim being made breaking it down by provider, dates of service, amounts owed, bills attached and referred to by tabs," counsel produced a box of documents that the arbitrator found had "no clear submission as to what claimant is alleging should be paid, to whom the bills should be paid and for what date of service."

Plaintiff appealed. In April 2004, AAA determined there was no mistake of law and denied plaintiff's appeal under AAA Rule 36. On April 30, 2004, plaintiff sought reconsideration of the AAA ruling. Defendants responded by letter of May 4, 2004, stating that the AAA rules do not permit a petition for reconsideration. On October 19, 2004, AAA rejected plaintiff's attempt to seek reconsideration, advising that its rules do not provide for such relief.

On November 30, 2004, plaintiff filed a three-count complaint, which is the subject matter of this appeal, seeking damages for defendants' failure to pay certain bills owed by her to four providers, alleging that defendants: (1) provided incorrect and fraudulent submissions to AAA; (2) acted in bad faith and with fraudulent intent in "unjustifiably refus[ing] plaintiff her entitlements"; and (3) intentionally inflicted severe emotional distress upon plaintiff.

On appeal, plaintiff asserts that the judge erred in granting defendants' motion for summary judgment because there existed issues of material fact and credibility concerning fraudulent activity on the part of defendants, that her rights were violated during the arbitration because she produced sufficient proof to establish that a timely claim existed for a certain amount causally related to the accident, and the judge

relied upon "mistaken reasons." Finally, although mischaracterized in her appellate brief as "COUNT FOUR," plaintiff asserts that, under R. 4:49-1(a), the judge's decision represented clear error and a manifest miscarriage of justice. Plaintiff's contentions lack merit.

Granting defendants' motion for summary judgment, Judge Lombardi found that he lacked jurisdiction, pointing out that N.J.S.A. 2A:24-8, which allows a court to vacate an arbitration award where the award was procured by corruption, fraud, or undue means, infers that the fraud claimed must be on the part of the arbitrators. In Habick v. Liberty Mut. Fire Ins. Co., 320 N.J. Super. 244, 252-53 (App. Div.), certif. denied, 161 N.J. 149 (1999), we held that the review standard announced in Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349 (1994), applied to review PIP arbitrations. Under Tretina, the review standard is as follows:

> "Basically, arbitration awards may be vacated only for fraud, corruption, or similar wrongdoing on the part of the arbitrators. [They] can be corrected or modified only for very specifically defined mistakes as set forth in [N.J.S.A. 2A:24-9]. If the arbitrators decide a matter not even submitted to them, that matter can be excluded from the award."
>
> [Tretina, supra, 135 N.J. at 358 (quoting Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 548-49 (1992) (emphasis added) (alterations in original).]

Pursuant to this standard, only in rare circumstances may a court vacate an arbitration award for public-policy reasons, and errors of law or fact made by the arbitrators are not correctable. Id. at 357-58, 364; Ukrainian Nat'l Urban Renewal Corp. v. Joseph L. Muscarelle, Inc., 151 N.J. Super. 386, 396 (App. Div.), certif. denied, 75 N.J. 529 (1977). Here, plaintiff claimed fraud on the part of defendants, not the arbitrators. Judge Lombardi correctly applied the Tretina standard in dismissing plaintiff's complaint.

Judge Lombardi noted that plaintiff's claim of fraud, even if cognizable under N.J.S.A. 2A:24-8, lacked the required specificity to satisfy the elements of legal or equitable relief. See State v. Qwest Commc'ns. Int'l, Inc., 387 N.J. Super. 469, 484-85 (App. Div. 2006). He appropriately pointed out that plaintiff essentially wanted him to substitute his judgment concerning the adequacy of plaintiff's proofs for that of the arbitrator.

Judge Lombardi also found that plaintiff's November 30, 2004, complaint was not timely filed. We agree. Plaintiff, as the non-prevailing party, was obligated to file a claim to vacate the arbitration award within three months after the award was entered. Policeman's Benevolent Ass'n, Local 292 v. Borough of N. Haledon, 158 N.J. 392, 398-99 (1999). The final

arbitration award was rendered on April 14, 2004. AAA's October 19, 2004, response did not qualify as an award. Instead, it was a rejection of plaintiff's attempt to seek relief not provided by AAA's rules. Moreover, contrary to plaintiff's contention, defendants' counterclaim to confirm arbitration, as the prevailing party, was not proscribed by the three-month limitation period in N.J.S.A. 2A:24-7. See Heffner v. Jacobson, 100 N.J. 550, 555 (1985). As such, the filing of defendant's counterclaim did not relieve plaintiff from filing her complaint in a timely manner.

We have carefully reviewed the entire record submitted by the parties, and conclude that all of plaintiff's arguments, including those not specifically addressed by us, lack sufficient merit necessitating further discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons set forth in Judge Lombardi's decision of November 4, 2005.

Affirmed.